



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

E9

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/698,423 | 11/03/2003 | Clark Easter | 026063-00018 | 1510 |
| 4372 | 7590 | 08/11/2005 | EXAMINER | |
| AREN'T FOX PLLC 1050 CONNECTICUT AVENUE, N.W. SUITE 400 WASHINGTON, DC 20036 | | | SMITH, TRACI L | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3629 | |

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|---|-----------------|---------------|
| Advisory Action Before the Filing of an Appeal Brief | Application No. | Applicant(s) |
| | 10/698,423 | EASTER ET AL. |
| Examiner | Art Unit | |
| Traci L. Smith | 3629 | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 21 July 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) The period for reply expires 3 months from the mailing date of the final rejection.

b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

(a) They raise new issues that would require further consideration and/or search (see NOTE below);

(b) They raise the issue of new matter (see NOTE below);

(c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

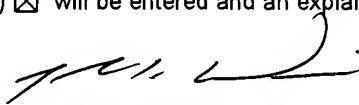
(d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. Applicant's reply has overcome the following rejection(s): _____.
 6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____. 

Claim(s) objected to: _____.
 Claim(s) rejected: 1-39.
 Claim(s) withdrawn from consideration: _____.
JOHN G. WEISS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see below.

12. Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. Other: _____.

Applicants arguments were all drawn towards Claim 1, 14, 19, 20 and 31.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, as the examiner interprets in it's broadest reasonable sense the prior art references combined teach the limitations of the claimed invention and will demonstrate as such below.

In response to the applicants argument that the 4GL reference citation of Pg.5 l. 14-15 is associated with "creating" not identifying whether an encounter is missed. Examiner notes that nowhere is it stated that the reports are "creating" timelines; that is merely applicants interpretation of the citation. The examiner asserts the citation can be interpreted as the reports indicated timelines that are approaching; timelines which have already been designated in such that when the report shows "missed" ones meaning a timeline was missed for a specific encounter already designated.

In response applicants arguments that 4GL fails to teach identifying encounters that actually occurred. Examiner notes that Pg. 6 l. 25-28 states generating accurate and complete reports meeting state and federal regulations; reporting progress towards the goal is interpreted as indicating the encounters the student received according to state and federal guidelines which would stipulate a time frame which can be as much as a school year; therefore it is identifying when services took place during a date frame. Examiner further notes Pg. 5 l. 19-20 teach tracking providers and/or replacement providers that are accountable for IEP services during a valid time range; therefore it is tracked when a provider supplied the service in the designated date range.

For the same reasons as above as being dependent on the above argued claims Claims 2-13, 15-18, 21-30 and 32-39 stand as previously rejected.

In response to applicant arguments regarding the 35 USC 112 ¶ 1 the alleged teachings pointed out in ¶¶ 0052, 0064-0065 Examiner notes that in order to perform the calculations as described by these paragraphs one needs to know what the level and types of services that are going to be performed which is claimed to be electronically determined. However, there is no teaching as to how the levels and/or type are electronically determined. The examiner further notes that it is not taught for what is done with multiple services that need to be provided in the same or different "date ranges". How is it determined or identified that in short week a partial service is to be performed and how is does this equate out to a "collective balancing". If a there is a short week but not long week it is believed there will be a shortfall in services indicated. How is this shortfall balanced out? Applicants arguments do not overcome the above mentioned rejections.